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Processes of direct democracy on the federal level in Brazil:

An inventory and a research outlook

Rolf RAUSCHENBACH

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ABSTRACT

Problem addressed: Brazil is well known for its participatory budget. However, little information is available to the international academic community when it comes to the Brazilian practice of processes of direct democracy. Result of this study: This paper provides a full account of the Brazilian processes of direct democracy on the federal level, including their historical and legal context. It draws a preliminary conclusion and formulates a research outlook. Method applied: Desk-research.

KEY WORDS

Direct democracy, referendum, plebiscite, popular initiative, Brazil

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1 Introduction¹

After 21 years of military regime (1964-1985), Brazil proclaimed in 1988 a new constitution, which included three processes of direct democracy:

- *Plebiscito*²;
- *Referendo*;
- *Iniciativa popular*.

These instruments were incorporated into the constitution to promote the democratization of Brazil and to favor the creation of an active civil society. As of today, one *Plebiscito*, one *Referendo* and five *Iniciativas populares* occurred on the federal level. The academic literature on processes of direct democracy in Brazil is rather scarce. While preparing this paper, little relevant information in English could be identified.³ The literature in Portuguese language can be divided into four groups:

- Firstly, a few titles have been published soon after the proclamation of the new constitution. Moisés⁴ and Benevides⁵ discuss the institutions of direct participation and electoral representation from a theoretical and normative point of view and put quite some hope into processes of direct democracy.
- A second group of studies covers the legal aspects of processes of direct democracy in Brazil. All authors affirm that the legislation of these mechanisms is not coherent and does not allow adequate participation. Most of these works are master and doctoral thesis⁶ and were not officially published.
- Thirdly, there are several articles analyzing the *Referendo* from 2005. In a volume edited by Inácio et al., a number of issues are raised: the importance

1 I would like to thank San Romanelli, Yanina Welp and Uwe Serdült for the valuable comments on an earlier version of this study.

2 In this paper, the original Portuguese terms are maintained to clearly flag out the specific Brazilian institutions.

3 Bovo provides a historical overview on processes of direct democracy, however without a presenting a complete inventory of processes of direct democracy on the federal level. She also does not clearly distinguish between formal and informal plebiscites. BOVO (2008), *Brazil*. Kaufmann et al. mention that in Brazil, plebiscites were held between 1978 and 2009. KAUFMANN et al. (2010), *Guidebook to direct democracy*, p. 220. The IDEA-Handbook provides some more detailed information, but remains at very summarized and comparative level. BERAMENDI (2008), *Direct Democracy*.

4 MOISÉS (1990), *Cidadania e participação*.

5 BENEVIDES (1991), *A cidadania ativa*.

6 AUAD (2004), *Mecanismos de participação popular no Brasil*; ÁVILA (2002), *Mecanismos de democracia direta no direito brasileiro*; CARNEIRO (sem data), *A iniciativa popular no processo legislativo brasileiro*; GALANTE (2006), *Democracia participativa*; GARCIA (2004), *Democracia semidireta*; VOGEL (2006), *Atualização de estudo sobre "participação popular nas decisões legislativas"*; ZART (2007), *O poder constituinte derivado e a sistemática das emendas constitucionais na constituição federal de 1988*.

of the executive bodies during the realization of the *Referendo*⁷, the tension between representative institutions and citizen participation⁸ and the influence of media and propaganda⁹. The authors of this compendium conclude that the *Referendo* of 2005 revealed the fragility of this institution and that both the political system as well as the Brazilian society was not yet able to fully take advantages of the benefits of referendums. Other authors have deepened and confirmed this analysis.¹⁰

- Finally, a couple of authors study processes of direct democracy from a more general point of view. Dantas formulates a balance of the first twenty years of political participation under the new constitution with ambivalent results: on the one hand, the initial optimism has not been confirmed; on the other hand, new forms of participation, such as the participatory budgeting of steering councils have been invented.¹¹ Mendes argues along the same line, focusing on the democratic deficit.¹² Alves analyzes how the party fragmentation, the political systems and the functioning of processes of direct democracy are correlated.¹³ In another study, Alves focuses on the proposal of mechanisms of direct democracy in the *Congresso Nacional*.¹⁴ Peterlevitz bases his measure for the quality of democracy and political participation, among other criteria, on the use of processes of direct democracy.¹⁵

This paper will provide a descriptive account of the Brazilian processes of direct democracy, including their historical and legal context; it is structured chronologically. It is based on desk-research.

7 INÁCIO (2006), *Implementando a agenda presidencial?*

8 ANASTÁSIA & INÁCIO & NOVAIS (2006), *Referendo e democracia*; ARAÚJO & SANTANA (2006), *O referendo sobre o comércio das armas*.

9 CASTRO (2006), *Mídia e Política*; FUKS & NOVAIS (2006), *O referendo e a cobertura da imprensa*; FUKS & PAIVA (2006), *Persuasão e deliberação sobre políticas públicas*.

10 MENEZES & DIAS (2009), *Campanha política e mídia no referendo das armas*; VIEGA & AVI DOS SANTOS (2008), *O referendo das armas no Brasil*; ARAÚJO JUNIOR et al. (2007), *“Dê-me segurança ou lhe dou um Não”*; MENDONÇA (2009), *A cooperação na deliberação pública*.

11 DANTAS (2008), *Direitos políticos e participação popular*.

12 MENDES (2007), *Representação política e participação*.

13 ALVES (2011), *Comparing direct democracy processes in South*.

14 ALVES (2010), *Mecanismos de democracia direta e seus usos*.

15 PETERLEVITZ (2011), *Adding direct democracy processes to an assessment of political participation*.

2 Processes of direct democracy in the past

2.1 Processes of direct democracy before 1985

Benevides dates the first practices of direct democracy in Brazil to 1824.¹⁶ During the elaboration of the first federal constitution 1889-1891, the possibility of a popular vote was cogitated. However, the understanding of the Positivist, the driving force of the establishment of the first Brazilian Republic, was that such a popular vote should consist only of a popular debate, not a popular vote. The confusion about a popular vote was further increased by the decree number one, proclaiming the Republic provisionally, until a popular vote would be held.¹⁷ The final text of the first federal constitution stated however, that the approval of the constitution remains solely in the power of the National Congress.¹⁸ Monarchists argued subsequently that the Republic was proclaimed illegitimately.¹⁹ The Revolution in 1930, which brought Getúlio Vargas to power, produced the need for a new constitution, which was proclaimed in 1934. It does not mention any process of direct democracy.²⁰ The presidential mandate of Vargas was to end in 1938. To avoid a takeover by the left, Vargas pulled off another coup d'état and proclaimed a new constitution in 1937. The constitution of 1937 allowed the *Presidente da República* to call for *Plebiscitos* in the following four cases: (1) the approval of the new constitution,²¹ (2) territorial changes,²² (3) competencies of the Council of National Economy²³ and (4) changes to the constitution, if no agreement between the *Presidente de República* and the *Congresso Nacional* can be reached.²⁴ However, none of these *Plebiscitos* were actually held.²⁵ By the end of the Second World War, Vargas was forced to resign from presidency. During the preparation of the new constitution in 1945, a constitutional law was passed, abolishing any kind of *Plebiscito*, as this mechanism would hinder the parliament's liberty to decide on constitutional matters.²⁶ The constitution of 1946 did foresee a *Plebiscito* only in the case of territorial changes.²⁷ In 1961, the president Jânio Quadros resigned from his mandate. The armed forces were opposed to the vice-president João Goulart taking office, who was at that moment on an official visit to China. João Goulart would be able to assume presidency only after the Congress had changed the governmental system from a presidential to a parliamentary set-up with reduced powers for the *Presidente de*

16 BENEVIDES (1991), *A cidadania ativa*, p. 112.

17 Decreto numero 1, de 15 de Novembro de 1889, Art. 7.

18 Constituição da República dos Estados Unidos do Brasil de 24 de Fevereiro de 1891, Art. 91.

19 BENEVIDES (1991), *A cidadania ativa*, p. 114 et sqq..

20 Benevides notes however, that in a draft version, the recall of the President of the Republic via plebiscite was cogitated. BENEVIDES (1991), *A cidadania ativa*, p. 116.

21 Constituição dos Estados Unidos do Brasil, de 10 de Novembro de 1937, Art. 187.

22 Constituição dos Estados Unidos do Brasil, de 10 de Novembro de 1937, Art. 5.

23 Constituição dos Estados Unidos do Brasil, de 10 de Novembro de 1937, Art. 63.

24 Constituição dos Estados Unidos do Brasil, de 10 de Novembro de 1937, Art. 174.

25 BENEVIDES (1991), *A cidadania ativa*, p. 118.

26 Lei Constitucional No. 9, de 1945. BENEVIDES (1991), *A cidadania ativa*, p. 119.

27 Constituição dos Estados Unidos do Brasil, de 18 de Setembro de 1946, Art. 2º.

República. The *Congresso Nacional* did foresee a popular vote on whether the parliamentary set-up should persist or whether the presidential system should be re-introduced. The date for this popular vote was set nine months before the end of the João Goulart presidency.²⁸ However, the parliamentary system proved to be unstable: the first prime minister, Tancredo Neves, resigned after ten, the second prime minister, Francisco Brochado de Rocha, after three months in office; in the same period, two general strikes occurred. Due to these reasons, the *Plebiscito sobre o sistema de governo* was anticipated and held on January 6, 1963. The vast majority voted in favor of a return to a presidential set-up.²⁹ Although the majority of the elite of the armed forces supported the return to the presidential system, their mistrust in João Goulart increased. As the president tried to push his fundamental reforms ahead – including the political rights of illiterate citizens – the armed forces pulled off another coup d'état in April 1964. The constitution proclaimed by the military dictatorship in 1967 did foresee the consultation of the local population in the case of the creation of new municipalities.³⁰ Despite the fact that the constitution did not foresee any processes of direct democracy, representatives proposed a considerable number of *Plebiscitos* to the National Congress. Benevides mentions, among others, a proposal on agrarian reform, three proposals on divorce, four proposals on the direct election of the president and ten proposals on the installation of nuclear power plants. It goes without saying that none of these popular votes was realized; the press did not even report most of them.³¹

In summary, it can be said that in the history of Brazil until the end of the military dictatorship, processes of direct democracy played a minor role. The only realized process of direct democracy, the *Plebiscito sobre o sistema de governo*, was held in 1963 under politically unfavorable circumstances; the result was not able to stabilize the course of events. Furthermore, it has to be noted that at that time, only about 23% of the overall population had the right to participate in that vote, as the vast majority of the population, being illiterate, was excluded from political rights.

2.2 Constituent Assembly 1985-1988

The uprising against the military regime was motivated by a number of factors. The most important was without a doubt the brutality of the regime. As the economic situation was aggravating, the pressure from the streets against the military regime increased even further. In 1984, a number of organizations and social movements joined forces under the slogan “*Diretas já!*”³². This movement generated a number of

28 Emenda Constitucional No. 4 de 2 de Setembro de 1961, Art. 25. The end of João Goulart's mandate was set on January 31, 1966; Emenda Constitucional No. 4 de 2 de Setembro de 1961, Art. 21.

29 The *plebiscito* was held on January 6, 1963. Out of about 77 million Brazilians, only about 18 million citizens had the right to vote (23%). At that time, illiterate citizens were excluded from political rights. In the vote, 11,531,030 citizens took part, 9,457,448 voted for a return to a presidential set-up while 2,073,582 voted for maintaining the parliamentary system. For a critical assessment of this *Plebiscito*: BENEVIDES (1993), O plebiscito de 1963 à luz do precedente de 1963, p. 77 et sqq..

30 Constituição da República federativa do Brasil de 1967, Art. 14.

31 BENEVIDES (1991), *A cidadania ativa*, p. 120 et sqq..

32 [*Eleições presidenciais*] *diretas já!* meaning “direct [presidential elections] now!”.

big political demonstrations. It culminated in a demonstration of about 1.5 million people in São Paulo.³³ The grassroots movements,³⁴ fighting for the democratization of Brazil, demanded an exclusive constituent assembly. This demand was not satisfied, as solely the *Congresso Nacional* was entitled to formulate the new constitution.³⁵ Due to these circumstances, the legitimacy of the *Assembléia Nacional Constituinte* remains questionable. Nevertheless, the initially planned approach to establish a new constitution exclusively by members of the *Câmara dos Deputados* and the *Senado* had to be abandoned and more participatory modes were adopted. There were three ways in which citizens were able to contribute to the elaboration of the new constitution:

The first was the equivalent of a petition. Nationwide, a form was distributed on which any citizen could make suggestions. A database was established to collect the 72,719 submitted suggestions.³⁶

Second, approximately 400 local meetings were held, leading to an additional 2,400 suggestions.

The third mode was introduced once the draft version of the new constitution was available. Legally established associations could present further suggestions, if they were able to back up their position with at least 30,000 signatures. Out of 122 such associational suggestions, supported by 12 million signatures, 83 met the formal prerequisites and were presented to the Congress. The concept of these associational suggestions was the result of the first, not yet institutionalized, *Iniciativa popular*. This *Iniciativa popular pela Assembléia Nacional Constituinte* was launched in 1987 and was supported by 402,266 citizens. It added the concept of the associational suggestions to the bylaws of the National Constituent Assembly.³⁷

Three *Emendas populares* aimed at the inclusion of the *Referendo* and the *Iniciativa popular* were supported by more than 400,000 signatures, mainly collected by the *Plénario de São Paulo*, the *Movimento Gaúcho da Constituinte* and the *Plénario de Minas Gerais*. Despite the explicit mistrust of the conservative representatives, the *Assembléia Nacional Constituinte* approved in the first reading the *Referendo*, the *Iniciativa popular* and the *Veto popular*. In the second reading, the *veto popular* was abandoned, as the conservative forces prevailed over the more progressive ones.³⁸

33 This demonstration took place on April 16, 1984. The parade marched from Praça da Sé to Vale do Anhangabaú.

34 The driving forces of this grassroots movement were, among others, labor unions, students, intellectuals and the church.

35 Emenda constitucional n° 26 de 27 de Novembro de 1985 – Art. 1.

36 Sistema de Apoio Informático à Constituinte, SAIC; these suggestions are still available at <http://www.senado.gov.br/sf/legislacao/baseshist/>.

37 Regimento Interno da Assembléia Nacional Constituinte, Art. 24.

38 BENEVIDES (1991), *Cidadania ativa*, p. 125. See also: ARAÚJO (2007), *O processo constituinte (1985-1988)*, GOMES (2002), *A assembléia nacional constituinte e o regimento interno*. GOULART (2009), *As múltiplas faces da constituição cidadão*. ALVES (2010), *Mecanismos de democracia direta e seus usos*, pp. 233.

3 Current instruments of direct democracy and their use

The constitution of 1988 states that all power emanates from the people; they can exercise their power by representation or by direct means.³⁹ The constitution of 1988 introduces full political rights for all citizens, regardless of their literacy.⁴⁰ However, the right to vote does not come automatically. Citizens have to register as a voter in their district to obtain their individual *Título eleitoral*.⁴¹ This document is similar to an identification card; it serves only for election purposes and has to be presented on each voting day. Both the registration and in the case of relocation to another district the transfer of the *Título eleitoral* are subject to extensive deadlines. The participation in elections and popular votes is mandatory for citizens older than 18 years. The participation in elections and popular votes is optional for citizens between 16 and 18 and older than 70 years as well as for illiterate people.⁴² Voters who do not participate in a vote are fined.⁴³ Missing three consecutive elections leads to the cancellation of the *Título eleitoral*.⁴⁴ Irregular electoral documents may also complicate non-state relationships as employers often check future employees accordingly; the same applies for example for future credit-holders.

In the following chapters, the *Plebiscito*, *Referendo* and the *Iniciativa popular* will be described in further detail, both in terms of their legal regulation as well as in terms of their actual use.

3.1 Plebiscito

The constitution of 1988 introduces the *Plebiscito* in Art. 14.⁴⁵ The constitution provides further details with regard to *Plebiscitos* on territorial changes on the state⁴⁶ and on the municipal⁴⁷ level. Territorial changes on the municipal level need only the approval in a plebiscite of the concerned population; territorial changes on the state

39 Constituição da República federativa do Brasil de 1988, Art. 1.

40 Before the proclamation of the Constitution of 1988, illiterate citizens did not have any political rights. Citizens who do not speak the national language are excluded from their political rights. Lei No. 4.737, de 15 de Julho de 1965, Art. 5.

41 Lei No. 4.737, de 15 de Julho de 1965, Art. 42 et sqq. People with a handicap and Brazilians living abroad are not required to register, Lei No. 4.737, de 15 de Julho de 1965, Art. 6 I.

42 Constituição da República federativa do Brasil de 1988, Art. 14. § 1. Furthermore, imprisoned persons, citizens who are travelling as well as public office holders and military personnel unable to vote are exempted from the mandatory vote. Lei No. 4.737, de 15 de Julho de 1965, Art. 6 II.

43 The fine amounts to 3 to 10% of one minimum wage, currently being 510 BRL (~330 USD). Lei No. 4.737, de 15 de Julho de 1965, Art. 6 II. Citizens living below the poverty line are exempted from electoral fines. Lei No. 4.737, de 15 de Julho de 1965, Art. 367 X § 3. As long as an infringement of the electoral law has not been resolved, a number of administrative acts such as the emission of a new passport are blocked. Lei No. 4.737, de 15 de Julho de 1965, Art. 7.

44 Lei No. 4.737, de 15 de Julho de 1965, Art. 71 V.

45 Constituição da República federativa do Brasil de 1988, Art. 14.

46 Constituição da República federativa do Brasil de 1988, Art. 18 § 3.

47 Constituição da República federativa do Brasil de 1988, Art. 18 § 4.

level also need the approval by the *Congresso Nacional*. The constitution also states that the *Congresso Nacional* has the exclusive competence to convoke *Plebiscitos*.⁴⁸ According to the Lei No. 9.709, in a *Plebiscito*, constitutional, legislative and administrative matters can be decided on; they need to be of particular relevance.⁴⁹ A *Plebiscito* takes place before a bill is passed on that very matter.⁵⁰ A *Plebiscito* can be convoked by at least one third of the members of either the *Câmara dos Deputados* or the *Senado*; the majority of the *Congresso Nacional* has to approve it.⁵¹ Once a *Plebiscito* is approved, the *Justiça Eleitoral*⁵² fixes the date for the popular vote, publishes the content of the ballot, organizes the vote and provides the political actors involved in the vote with free air time in the media of mass communication.⁵³ From the same moment on, the parliamentary deliberations on that issue remain suspended until the result of the vote is proclaimed.⁵⁴ The approval of a *Plebiscito* requires a simple majority.⁵⁵

3.1.1 Plebiscitos territorias

It is interesting to note that with the promulgation of the constitution of 1988, one new federal state was created – Tocantins –, however without execution of a *Plebiscito*. In that respect, the constitution was contradicting itself.⁵⁶

On December 11, 2011, the population of the *Estado do Pará* voted on the creation of two new states: *Estado do Carajás* and *Estado do Tapajós*. Both proposals were rejected. There are a number of other plebiscites on the creation of new states pending in the *Congresso Nacional*; it is however unforeseeable, if and when they will be put on the ballot.

3.1.2 Plebiscito sobre a forma e o sistema de governo

Under the current constitution, one *Plebiscito* has been held so far; it was prescribed in the temporary arrangements of the constitution itself.⁵⁷ The ballot included two issues: the governmental form (republic versus constitutional monarchy) and the governmental system (parliamentary versus presidential system). The *Emenda Constitucional No. 2*, anticipated the *Plebiscito* on April 21, 1993 (instead of

48 Constituição da República federativa do Brasil de 1988, Art. 49 XV.

49 Lei No. 9.709, de 18 de Novembro de 1998, Art. 2.

50 Lei No. 9.709, de 18 de Novembro de 1998, Art. 2 § 1.

51 Lei No. 9.709, de 18 de Novembro de 1998, Art. 3.

52 The *Justiça Eleitoral* (= Justice for electoral matters) is a tribunal body, incorporated on the federal and state level. It is responsible in particular for the supervision of the election processes, the audit of accounting of the political parties and the punishment of infringements of the election laws.

53 Lei No. 9.709, de 18 de Novembro de 1998, Art. 8.

54 Lei No. 9.709, de 18 de Novembro de 1998, Art. 9.

55 Lei No. 9.709, de 18 de Novembro de 1998, Art. 10.

56 Constituição da República federativa do Brasil de 1988, Ato das Disposições Constitucionais Transitórias, Art. 13.

57 Constituição da República federativa do Brasil de 1988, Ato das Disposições Constitucionais Transitórias, Art. 2.

September 7, 1993).⁵⁸ The vast majority voted in favor of a republic with a presidential system.⁵⁹

Although this *Plebiscito* was prescribed by the constitution, it contained a number of constitutional contradictions; the most obvious being the possible but absurd result of a constitutional monarchy under a presidential regime.⁶⁰ In addition to this, Dutra deems the plebiscite of 1993 unconstitutional,⁶¹ as the possible implementation of a constitutional monarchy would have infringed on the constitutional provision that the federal form, the direct, secret, universal and periodic vote, the separation of powers and the individual rights and guarantees cannot be abolished.⁶²

3.1.3 Informal plebiscites

Apart from the above mentioned plebiscites, other plebiscites were held informally without any institutional support. Informal plebiscites do not have the legal force of formal plebiscites. However, they can trigger political change, either on the issue they are targeting or even more profoundly, leading to the realization of formal plebiscites.⁶³

The first occurred between September 2 and 7, 2000 and dealt with the public finances of Brazil. It was organized by a number of organizations, such as CNBB⁶⁴, CUT⁶⁵, IAB⁶⁶ and MST⁶⁷; about 5.5 million people took part in that vote.⁶⁸

58 Emenda Constitucional No. 2 de 25 de Agosto de 1992.

59 *Plebiscito* on the governmental form: 44,528,920 citizens voted in favor of a republic, 6,840,551 citizens voted in favor of a constitutional monarchy; 8,868,816 votes were blank, 7,027,067 votes were invalid and 23,265,770 citizens abstained from the vote. *Plebiscito* on the governmental system: 37,153,884 citizens voted in favor of a presidential system, 16,518,028 citizens voted in favor of a parliamentary system, 3,467,181 votes were blank, 9,868,316 votes were invalid and 23,246,143 citizens abstained from the vote.

60 KONDER COMPARATO (1992), *O plebiscito do Art. 2 do Ato das Disposições Constitucionais Transitórias*, p. 67 et sqq.. See also BENEVIDES (1993), *O plebiscito de 1993 à luz do precedente de 1963*, p. 75 et sqq..

61 DUTRA (1995), *Democracia plebiscitária*, p. 160 et sqq.

62 Constituição da República federativa do Brasil de 1988, Art. 60. § 4.

63 In March 1990, when in Colombia was cogitated to formulate a new constitution, the student movement motivated more than two million citizens to add to the official votes for elections a vote asking for a constitutional assembly. This informal plebiscite, which however occurred within the official infrastructure, propelled the constitutional process. Later in the same year, two presidential plebiscites were held. JIMÉNEZ (2006), *Momentos, escenarios y sujetos de la producción constituyente*, p. 141. WELP, SERDÜLT (in print), *Reto, competencia y manipulación*, p. 15.

64 Conferência Nacional dos Bispos do Brasil (national conference of the bishops of Brazil).

65 Central Única dos Trabalhadores (biggest labor union in Brazil).

66 Instituto dos Arquitetos do Brasil (association of Brazilian architects).

67 Movimento dos Trabalhadores Rurais Sem Terra (movement of landless rural workers).

68 The ballot included three questions, all of which were rejected: 1. Should the Brazilian government maintain the treaties with the International Monetary Fund? 2. Should

A number of non-governmental organizations planned an informal plebiscite on the *Área de Livre Comércio das Américas* (ALCA)⁶⁹ in September 2002; in the frame of the present research, no result of this informal plebiscite could be identified.⁷⁰

A number of non-governmental organizations hold an informal plebiscite on limiting the ownership of land in September 2010; about 0.5 million people took part in that vote.⁷¹

The results of all these informal plebiscites were for obvious reasons non-binding; in the frame of the present research, no relevant repercussion of any of these informal plebiscites in the greater public could be identified.

3.2 Referendo

The constitution of 1988 introduces the *Referendo* in Art. 14. The constitution states that the *Congresso Nacional* has the exclusive competence to authorize *Referendos*.⁷² In a *Referendo*, constitutional, legislative and administrative matters can be decided on; they need to be of particular relevance.⁷³ A *Referendo* takes place after a bill has been passed on that very matter; the citizens may approve or reject the respective bill.⁷⁴ One third of the members of either the *Câmara dos Deputados* or the *Senado* can initiate the convocation of a *Referendo*; the convocation needs to be approved by the majority of the *Congresso Nacional*.⁷⁵ Once a *Referendo* is convoked, it is the *Justiça Eleitoral* that fixes the date for the popular vote, publishes the content of the ballot, organizes the vote and provides the political actors involved in the vote with free air time in the media of mass communication.⁷⁶ The approval of a *Referendo* requires a simple majority.⁷⁷ A *Referendo* can be convoked within 30 days after the publication of the relevant bill.⁷⁸

Brazil continue to serve the external debt, without realizing a public audit, as foreseen by the Constitution of 1988? 3. Should the federal, state and municipal governments continue using important parts of the public budget to serve the internal debt in favor of carpetbaggers?

For more information refer to: <http://www.cefetsp.br/edu/eso/plebiscitodivida.html>

69 Free Trade Area of the Americas (FTAA).

70 For more information: <http://www.social.ed.br/cartilhas/cartilha002/cartilha016.htm>.

71 The ballot included two questions, both of which were clearly approved: 1. Do you agree that big properties of land in Brazil should have a maximum limit of size? 2. Do you agree that a maximum limit of size for big properties of land in Brazil increase the production of healthy food and improve living conditions in rural and urban areas?

For more information: <http://www.limitedaterra.org.br/>.

72 Constituição da República federativa do Brasil de 1988, Art. 49 XV.

73 Lei No. 9.709, de 18 de Novembro de 1998, Art. 2.

74 Lei No. 9.709, de 18 de Novembro de 1998, Art. 2 § 2.

75 Lei No. 9.709, de 18 de Novembro de 1998, Art. 3.

76 Lei No. 9.709, de 18 de Novembro de 1998, Art. 8.

77 Lei No. 9.709, de 18 de Novembro de 1998, Art. 10.

78 Lei No. 9.709, de 18 de Novembro de 1998, Art. 11.

3.2.1 Referendo sobre a proibição da comercialização de armas de fogo e munições

Under the current constitution, one *Referendo* has been held so far. It dealt with the question if the sale of weapons and ammunition should be prohibited.⁷⁹ On October 23, 2005, the majority of citizens voted against the prohibition of the sale of weapons and ammunition.⁸⁰

3.3 Iniciativa popular

The constitution of 1988 introduces the *Iniciativa popular* on the federal level in Art. 14. The constitution states further that an *Iniciativa popular* needs to be backed up by signatures of at least 1% of eligible citizens. The minimum number of signatures must come from at least five states, of which each must provide signatures from at least 0.3% of its electorate.⁸¹ An *Iniciativa popular* must deal with one topic a time.⁸² An *Iniciativa popular* cannot be rejected by the *Câmara dos Deputados* because of formal reasons; it is the task of the latter to correct possible flaws.⁸³ The by-laws of the *Câmara dos Deputados* state further that the signatures in favor of the *Iniciativa popular* need to be backed up by the full name, address and the number of the *Título eleitoral*.⁸⁴ The lists of signatures must be standardized by the General Office of the *Câmara dos Deputados* and organized in terms of municipalities and states.⁸⁵ It is the duty of the organizations of the civil society to collect the signatures and to present the *Iniciativa popular*.⁸⁶ The *Justiça Eleitoral* informs, based on the latest census information available, what the required number of signatures is.⁸⁷ Once an *Iniciativa popular* has been presented, the General Office of the *Câmara dos Deputados* verifies if it corresponds with the constitutional requirements and adds it to the minutes.⁸⁸ From that moment on, the *Iniciativa popular* is dealt with as any other legal project.⁸⁹ Deliberations of an *Iniciativa popular*, both in commissions and in the plenary shall be initiated by the person who first signed the project or who was indicated when the project was presented; the discourse of the first speaker shall not exceed twenty minutes.⁹⁰ In the case that an *Iniciativa popular* includes more than one topic, it is the duty of the Commission for constitutional and justice matters to

79 "O comércio de armas de fogo e munição deve ser proibido no Brasil?"

80 33,333,045 citizens voted in favor of the prohibition, 59,109,265 citizens voted against the prohibition; 1,329,207 votes were blank and 1,604,307 votes were invalid.

81 Constituição da República federativa do Brasil de 1988, Art. 61 § 2.

82 Lei No. 9.709, de 18 de Novembro de 1998, Art. 13 § 1.

83 Lei No. 9.709, de 18 de Novembro de 1998, Art. 13 § 2. Regime Interno da Câmara dos Deputados, Art. 252 IX.

84 Regime Interno da Câmara dos Deputados, Art. 252 I.

85 Regime Interno da Câmara dos Deputados, Art. 252 II.

86 Regime Interno da Câmara dos Deputados, Art. 252 III.

87 Regime Interno da Câmara dos Deputados, Art. 252 IV.

88 Regime Interno da Câmara dos Deputados, Art. 252 V.

89 Regime Interno da Câmara dos Deputados, Art. 252 VI.

90 Regime Interno da Câmara dos Deputados, Art. 252 VII.

subdivide it accordingly.⁹¹ As for ordinary proposals of new law, the General Office assigns to each *Iniciativa popular* a *Deputado* as its sponsor.⁹²

In the following sections, the *Iniciativas populares* that have been presented to the *Câmara dos Deputados* as of today will be described briefly.

3.3.1 *Iniciativa popular* “Fundo de moradia”

The movement for this *Iniciativa popular* started in 1992. It resulted thirteen years later in the creation of the National Fund for Habitation of Social Interest.⁹³

3.3.2 *Iniciativa popular* “Crimes hediondos I”

This *Iniciativa popular* was provoked by the judgment of the killers of Daniela Perez. The supporters of this *Iniciativa popular* deemed the judgment to not be severe enough. The movement, which was led by Daniela’s mother, Gloria Perez, a famous author of *Telenovelas*, resulted in 1994 in a more strict punishment of qualified homicides.⁹⁴

3.3.3 *Iniciativa popular* “Compra de votos”

The movement for this *Iniciativa popular* was started in 1998 by the CNBB. Later, other organizations such as CONIC⁹⁵ and OAB⁹⁶ joined forces. It aimed at the prohibition of buying of votes by candidates by promising personal favors to their voters. It resulted in 1999 in a law that punishes the buying of votes with fines and the loss of office.⁹⁷

3.3.4 *Iniciativa popular* “Crimes hediondos II”

The killing by a lost bullet of Gabriela Prado Riberio motivated her parents to launch an *Iniciativa popular* to make the laws on qualified homicide stricter. The required signatures were presented to the *Câmara dos Deputados* on March 8, 2006.⁹⁸ No progress has been made by the parliament thus far.

3.3.5 *Iniciativa popular* “Ficha limpa”

The *Iniciativa popular* “Ficha limpa”⁹⁹ intends to bar a person to be a candidate in elections if he or she is condemned of one of the following crimes: crime of racism, homicide, rape, drug trafficking, misuse of public funds, buying of votes or misuse of the public administration.

91 Regime Interno da Câmara dos Deputados, Art. 252 VIII.

92 Regime Interno da Câmara dos Deputados, Art. 252 X.

93 Lei No. 11.124, de 16 de Junho de 2005.

94 Lei No. 8.930, de 6 de Setembro de 1994.

95 Conselho Nacional das Igrejas Cristãs (national council of Christian churches).

96 Orden dos Advogados do Brasil (association of Brazilian barristers).

97 Lei No. 9840, de 28 de Setembro de 1999.

98 Projeto de Lei No. 7.053/2006, see also www.gabrielasoudapaz.ed.

99 “Ficha limpa” means “clean legal record”.

The required signatures were presented to the *Câmara dos Deputados* on September 29, 2009. Additional signatures have been collected afterwards and electronically. The *Câmara dos Deputados*¹⁰⁰ and the *Senado*¹⁰¹ have approved a twofold altered proposal: First, persons are barred from being a candidate in an election once they have been condemned by the second level of jurisdiction; the *Iniciativa popular* foresaw to bar persons already after the first condemnation. Second, only persons who will be condemned after the moment the new law becomes effective, will also be barred from being a candidate in elections; the *Iniciativa popular* did foresee that all persons condemned are barred from being a candidate in elections.

The *Presidente da República* sanctioned the law on June 4, 2010.¹⁰² Various courts are currently evaluating, how this new piece of legislation shall be applied.

100 The *Câmara dos Deputados* approved the project on May 5, 2010.

101 The *Senado* approved the project on May 19, 2010.

102 Lei Complementar 135, Diário Oficial da União, 7 de Junho de 2010.

4 Preliminary conclusion and research outlook

The account of processes of direct democracy shows that in the recent history of Brazil, plebiscites, referendums and popular initiatives are present, but play only a limited role. The *Plebiscito sobre o sistema de governo* in 1963 is an illustrative example: the citizens voted for a return to a presidential regime and by doing so gave support to João Goulart and his progressive reforms. However, the conservative elite was not willing to accept this verdict and soon after pulled off a coup d'état. At the end of the military regime, the conservative forces were in the same way able to prevent the effective inclusion of processes of direct democracy in the new constitution, despite of their broad support in the now forming civil society.

In view of the problematic institutionalization, it is no wonder that these mechanisms have been used only sporadically since their introduction. On the other hand, one could argue that the realization of five *Iniciativas populares* under these difficult circumstances is quite a deed. It demonstrates that there are political groups that believe that processes of direct democracy are a valid mode to articulate their demands and that they are able to mobilize the necessary number of citizens to make their voice heard. In particular the last two *iniciativas populares* (*compra de votos, ficha limpa*), were perceived by a wider public and had quite some political impact. In this context, it is worthwhile to mention, that the same groups are in the process of collecting signatures for a new popular initiative: *iniciativa popular para a reforma do sistema político brasileiro*.¹⁰³ One of the main objectives of this popular initiative is to simplify and strengthen the mechanisms of the *plebiscito*, *referendo* and *iniciativa popular*.

The author of this study is about to embark on a larger research project on processes of direct democracy in Brazil. This research project will include among others, a detailed comparative analysis of the legal framework, in-depth case studies on selected processes of direct democracy, and an inventory of all processes of direct democracy on the State and municipal level.

103 In addition to the simplification and strengthening of the processes of direct democracy, the popular initiative for political reform aims at turning the *Congresso Nacional* more transparent and without privileges that hinder the democratic process. For more information refer to: <http://www.reformapolitica.org.br/>.

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